SECOND DIVISION

[G.R. No. 247221, June 15, 2020]

WILFREDO LIM SALAS, PETITIONER, VS. TRANSMED MANILA CORPORATION, TRANSMED SHIPPING LTD., AND EGBERT M. ELLEMA, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 18, 2019 and the Resolution[3] dated May 14, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 150519 which affirmed the Decision[4] dated November 29, 2016 and the Resolution[5] dated January 31, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 09-000644-16, finding petitioner Wilfredo Lim Salas (Salas) not entitled to disability benefits.

The Facts

On March 6, 2014, Salas was hired as Second Officer by respondent Transmed Manila Corporation (TMC) for its principal, Transmed Shipping Ltd. (TSL), on board the vessel M/V Coalmax for a period of eight (8) months.[6] After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty by the company-designated physician, Salas boarded the vessel on April 4, 2014 and commenced his tour of duty.[7] Upon the expiration of Salas' Contract of Employment on February 9, 2015, the parties agreed to extend the same for another two (2) months under the same terms and conditions.[8]

Sometime in February 2015, Salas reported a generalized feeling of weakness, easy fatigability, loss of appetite, and difficulty in sleeping. He was brought to a hospital in Rio de Janeiro, Brazil, and thereat, was diagnosed to be suffering from diabetes mellitus and gouty arthritis (on both knees), for which reason he was declared unfit for work[9] and **repatriated on March 21, 2015** for further medical evaluation and management.[10]

Upon arrival in Manila, Salas was admitted at Marine Medical Services and referred to a company-designated physician for evaluation and management. He was brought to an orthopedic surgeon, Dr. Ferdinand Bernal (Dr. Bernal), who confirmed that his joint pains were due to gouty arthritis and opined that the illness was not work-related, considering that it is caused by an increased uric level in the blood and that based on medical science, the risk factors of said illness are high purine diet.[11] Based on the

foregoing, the company-designated physician, Dr. Margarita Justine O. Bondoc (Dr. Bondoc), in a private and confidential Medical Report[12] dated March 23, 2015, informed TMC that Salas' diabetes mellitus is "*usually familial/hereditary*," while his gouty arthritis "*is a metabolic disorder secondary to a defect in purine metabolism and/or high purine diet*," and hence, declared the same to be not work-related.[13]

After a series of follow-up check-ups, the company-designated physician, in a Medical Report[14] dated May 4, 2015, replied that Salas' range of motion on both knees were already normal with no swelling and noted the specialist's opinion that the former was "cleared mihopedic wise." For this reason, Salas was directed to undergo repeat laboratory examinations and to return on May 18, 2015 for his next follow-up check up.[15] However, records fail to disclose whether or not the same was conducted or that there was any further update on the status of Salas' medical condition.

For his part, Salas claimed that his medical treatment was discontinued despite the fact that he was still suffering from bilateral knee pain and that his request for continued medical assistance was denied without furnishing him copies of his medical records or definite assessment. Consequently, Salas was compelled to consult an independent physician, Dr. Victor Gerardo E. Pundavela (Dr. Pundavela), who, in a Medical Certificate[16] dated July 23, 2015, diagnosed him to have "Degenerative Osteoarthritis with Gouty [A]rthritis, bilateral knee; NTDDM controlled." Dr. Pundavela pointed out that aside from Salas' chronically elevated blood uric acid levels, the knee pain could be brought about by repeated stresses and strains to his knees while performing his tasks as a Second Officer. He explicated that joint stresses from prolonged standing and, at times, faulty work posture cannot be avoided and may have taken a toll on Salas' knees. Considering that Salas' bilateral knee pain significantly decreased his activity tolerance and can no longer be returned to his pre-injury capacity, he was found to be unfit to work as a seafarer.[17]

Hence, Salas filed a complaint[18] for disability benefits, moral and exemplary damages, and attorney's fees against TMC, TSL, and Egbert M. Ellema (respondents) before the NLRC, docketed as NLRC NCR Case No. (M) 11-13007-15.

In their defense, respondents countered that Salas is not entitled to disability benefits as provided under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) since his diabetes mellitus was declared by the company-designated physician to be not work-related, while his gouty arthritis, aside from also not being work-related, was a pre-existing illness. They likewise denied the claims for damages and attorney's fees for lack of factual and legal bases.[19]

The Labor Arbiter Ruling

In a Decision[20] dated June 28, 2016, the Labor Arbiter (LA) ruled in favor of Salas, ordering respondents to jointly and severally pay him US$60,000.00 representing total and permanent disability benefits, as well as ten percent (10%) attorney's fees. The other claims were dismissed for lack of merit.

In so ruling, the LA held that Salas was able to establish a causal connection between his illnesses and the nature of his work as Second Officer to prove that he was entitled to disability compensation. The LA noted that no contrary evidence was adduced to rebut Salas' claim that his gouty arthritis was aggravated by repeated stresses and strains to his knees. Moreover, although the May 4, 2015 Medical Report cleared Salas "orthopedic wise," the company-designated physician nonetheless failed to indicate if he was already fit to resume work. Accordingly, since Salas' illnesses rendered him totally and permanently incapable of resuming work for more than 240 days, he was granted the maximum disability compensation rate provided under the 2010 POEA-SEC.[21]

Aggrieved, respondents filed an appeal[22] to the NLRC.

The NLRC Ruling

In a Decision[23] dated November 29, 2016, the NLRC reversed and set aside the LA's Decision and dismissed the complaint for lack of merit.[24] It held that Salas failed to prove that his gouty arthritis and diabetes mellitus were work-related. It also did not give credence to the medical report of Salas' independent physician, Dr. Pundavela, pointing out that the latter's declarations were mere conjectures and as such, cannot be given weight. Moreover, it ruled that while the POEA-SEC creates a disputable presumption of work-relatedness, the seafarer must still prove by substantial evidence that his work conditions caused or at least increased the risk of contracting the disease, which Salas failed to show. Accordingly, absent any causal connection between the nature of Salas' work and the risk factors involved in the development of his ailments, the lapse of the 240-day period as basis of the award was rendered irrelevant.[25]

Notably, Commissioner Nieves E. Vivar-De Castro (Commissioner Vivar-De Castro) tendered a dissent to the majority ruling, opining, *inter alia*, that "[s]ince there is no definitive final assessment as to [Salas'] ability to resume work as a seafarer, x x x Dr. Pundevela's July 23, 2015 Medical Report finding [Salas] partially and permanently unfit to work as a seafarer must be given credence. Said disability, having exceeded more than 240 days, is deemed total and permanent, by operation of law. As such, [Salas] is, without a doubt, entitled to compensation therefor under the POEASEC."[26]

Salas' motion for reconsideration was denied in a Resolution[27] dated January 31, 2017, prompting him to elevate the case *via* a petition for certiorari[28] before the CA.

The CA Ruling

In a Decision[29] dated February 18, 2019, the CA found no grave abuse of discretion on the part of the NLRC in dismissing the complaint for disability benefits. It ruled that Salas failed to prove that his illnesses were work-related under Section 32-A of the POEA-SEC. Further, it held that Salas failed to substantiate his claim that the nature of his job as Second Officer was a risk factor that aggravated his illnesses while he was onboard the vessel. It likewise noted that even Salas' independent physician failed to elaborate on how he arrived at his conclusion to justify the award of disability benefits.

As such, the CA found no further need to discuss the nature of Salas' disability.[30]

Salas' motion for reconsideration[31] was denied in a Resolution[32] dated May 14, 2019; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the finding that Salas is not entitled to total and permanent disability benefits.

The Court's Ruling

The petition is meritorious.

Section 20 (A) of the 2010 POEA-SEC, which applied at the time Salas executed his employment contract with respondents, states that:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers **work-related** injury or illness **during the term of his contract** are as follows:
>
> x x x x
>
> 2. x x x [I]f after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is **declared fit or the degree of his disability has been established by the company-designated physician**.
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> x x x x
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall

> also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphases supplied)

Based on the afore-cited provision, the employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, "***work-related illness***" is defined as "*any sickness as a result of an occupational disease listed under Section 32-A of [the 2010 POEA-SEC] with the conditions set therein satisfied*." Corollarily, Section 20 (A) (4) thereof further provides that "[t]hose illnesses not listed in Section 32 of [the 2010 POEA-SEC] are disputably presumed as work-related." Given the legal presumption in favor of the seafarer, he *may rely on and invoke such legal presumption to establish a fact in issue*. Thus, the burden is on the employer, not the employee, to prove that the illness is not work-related.[33]

In the case at bar, respondents averred that Salas is not entitled to the benefits provided under the 2010 POEA-SEC since his illnesses were declared by the company-designated physician to be not work-related. However, other than the company-designated physician's explanation that diabetes mellitus "is usually familial/hereditary," and that gouty arthritis "is a metabolic disorder secondary to defect in purine metabolism and/or high purine diet," no further assessment or evaluation was given in relation to Salas' illness that would dispute the legal presumption. In fact, as noted by NLRC Commissioner Vivar-De Castro in her dissent, the company-designated physician's findings were merely descriptive of the general nature of Salas' illnesses:

> With [regard to Salas'] Diabetes Mellitus, [the Labor Arbiter observed] that "no qualification was made as to [Salas'] medical history of diabetes, *i.e.*, whether familial/hereditary or acquired because of his lifestyle". Moreover, **the company-designated physician's statement was a mere characterization of the illness itself, and not the actual illness acquired by [Salas]**. Otherwise stated, it merely informed the Respondents what Diabetes Mellitus is, *i.e.*, "usually familial/hereditary". Said doctor made no categorical declaration that [Salas'] case fell within that category. As such, there is a strong possibility that [his] Diabetes Mellitus could have been an acquired illness. Considering that said illness manifested while [he] was on board the vessel; and that there is no previous diagnosis of the same, it can be safely inferred that said illness was acquired by [Salas] while on board the vessel x x x.
>
> **With [regard to Salas'] Gouty Arthritis, the company-designated physician's March 23, 2015 "opinion" merely described such illness**

> **and the probability of its causes.** As correctly observed by the Labor Arbiter, the medical opinion indicated that Gouty Arthritis is a metabolic disorder, and is qualified secondary to defect in purine metabolism and/or high purine diet. Since there is no express finding that [Salas'] Gouty Arthritis was due to defective purine metabolism, it necessarily follows that said illness resulted and was acquired while aboard. [Salas'] dietary intake while on board the vessel could have therefore contributed to the aggravation of said illness. x x x[34] (Emphases supplied)

Hence, contrary to the findings of the NLRC and the CA, the presumption remains in Salas' favor that his illnesses were work-related or aggravated by his work condition.

Further, it is well-settled that the failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed 120/240-day period **shall entitle the seafarer to total and permanent disability benefits by *operation of law***. To be sure, the pertinent obligations of the employer to the seafarer were detailed and explained in the case of *Ampo-on v. Reinier Pacific International Shipping, Inc.*,[35] to wit:

> Pursuant to the 2010 POEA-SEC, which applies to this case, the employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, work-related injury is defined as an injury arising out of and in the course of employment.
>
> Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists.
>
> The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. **As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.**
>
> **Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition**

> **remains unresolved, the law steps in to consider the latter's disability as total and permanent.**[36] (Emphases supplied)

In this case, record s show that the company-designated physician's Medical Report dated May 4, 2015 - which was the most recent medical report issued by respondents on Salas' medical status after his repatriation on March 21, 2015 - merely indicated that the specialist had opined Salas to be "cleared orthopedic wise." On its face, the said report did not state whether or not Salas was already fit to resume work or had been assessed with a certain disability grading. In fact, in the same report, Salas was required to undergo a repeat laboratory examination and to return for re-evaluation, the conduct of which were, however, not even shown by respondents. Neither was it claimed that Salas abandoned any further treatment. Thus, from all indications, it is fairly apparent that the May 4, 2015 Medical Report is not the final and definite disability assessment which respondents were required, by law, to issue within 120/240 days from Salas' repatriation on March 21, 2015. It bears reiteration that a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Accordingly, the failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods - as in this case - renders the seafarer's disability as total and permanent by operation of law.

In view of the foregoing, the Court therefore deems it proper to reverse the CA ruling and reinstate that of the LA, with modification imposing on the monetary awards due to Salas legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment, in accordance with prevailing jurisprudence.[37] At this juncture, it is apt to mention that - as observed by the LA - Salas' claims for moral and exemplary damages were not supported by any proof of bad faith or malice on respondents' part and hence, must be denied.[38] However, Salas is entitled to attorney's fees pursuant to Article 2208 (8) of the New Civil Code which states that the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability laws.[39]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 18, 2019 and the Resolution dated May 14,2019 of the Court of Appeals in CA-G.R. SP No. 150519 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated June 28, 2016 of the Labor Arbiter in NLRC NCR Case No. (M) 11-13007-15 awarding petitioner Wilfredo Lim Salas the amount of US$60,000.00 representing his total and permanent disability benefits and ten percent (10%) attorney's fees is hereby **REINSTATED** with **MODIFICATION** imposing on said awards legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Gaerlan*,* *JJ.*, concur.

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* Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

[1] *Rollo*, pp. 3-28.

[2] Id. at 34-50. Penned by Associate Justice Sesinando E. Villon with Associate Justices Edwin D. Sorongon and Germano Francisco D. Legaspi, concurring.

[3] Id. at 52-53.

[4] CA *rollo*, pp. 31-49. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog, concurring, and Commissioner Nieves E. Vivar-De Castro, dissenting.

[5] Id. at 51-56.

[6] See Contract of Employment dated March 6, 2014; *rollo*, p. 54.

[7] See *rollo*, p. 35.

[8] See id. See also Contract of Employment dated February 9, 2015; CA *rollo*, p. 99.

[9] See Medical Report dated March 19, 2015; id. at 56.

[10] See id. at 35-36.

[11] See id. at 36.

[12] CA *rollo*, p. 103.

[13] See *rollo*, p. 37.

[14] CA *rollo*, p. 104.

[15] See id. See also *rollo*, p. 38.

[16] *Rollo*, pp. 60-61 .

[17] See id. at 37-38.

[18] CA *rollo*, p. 66 and its dorsal portion.

[19] See Position Paper January 7, 2016; id. at 82-95.

[20] Id. at 152-158. Penned by Labor Arbiter Fedriel S. Panganiban.

[21] See id. at 155-157.

[22] See Notice of Appeal with Memorandum of Appeal dated July 25, 2016; id. at 160-185.

[23] Id. at 31-49.

[24] Id. at 44.

[25] See id. at 38-44.

[26] Id. at 47-48.

[27] Id. at 51-56.

[28] Dated April 19, 2017. Id. at 3-28.

[29] *Rollo*, pp. 34-50.

[30] Id. at 44-50.

[31] Dated January 6, 2019. CA *rollo*, pp. 220-232.

[32] Id. at 52-53.

[33] See *Romana v. Magsaysay Maritime Corporation*, 816 Phil. 194, 203-204 (2017).

[34] CA *rollo*, pp. 46-47.

[35] See G.R. No. 240614, June 10, 2019.

[36] See id.

[37] See *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[38] See *BPI Family Bank v. Franco*, 563 Phil. 495, 514-515 (2007).

[39] See *Esguerra v. United Philippine Lines, Inc.*, 713 Phil. 487, 501 (2013).